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Amdt. Dated March 2, 2005
Reply to Office Action of November 2, 2004

REMARKS/ARGUMENTS

In the response filed on December 22, 2004, Applicant amended the claims for better definition of the subject matter and to overcome the rejections by the Examiner in the Final Action dated November 2, 2004. In that response, together with the claim amendments submitted therewith, Applicant made every effort to fully respond to all the issues raised by the Examiner in the Final Action.

In the Advisory Action mailed January 24, 2005 the Examiner stated that the proposed amendments were not being entered, in that the amendments raised new issues that would require further consideration and search. While Applicant respectfully disagrees with the Examiner (see, for example, the table set out below under the heading "Source of Claims Amendments", which clearly demonstrates that all of the proposed claim amendments were of the same scope as the claims they replaced, and which the Examiner previously considered and searched), Applicant has resubmitted the proposed amendments (with one slight correction of a typographical error in Claim 30) as part of a Request for Continuing Examination (RCE).

This Request for Continuing Examination is based on

- (1) the amendments to the claims, shown in the Listing of Claims commencing on page 2 of this request, in which the amendments submitted with the response filed December 22, 2004 are repeated unchanged (except for the correction in Claim 30); and
- (2) the following remarks and arguments, in the context of the changes made and of the Final Action mailed on November 2, 2004, and in light of the Advisory Action mailed on January 24, 2005.

Nature of Claims Amendments

Applicant respectfully submits that the claims amendments submitted with the response filed on December 22, 2004 are entirely supported by the Specification as

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originally filed, nor would they require a further search. For the assistance of the Examiner, Applicant has set out in the table included below under the heading "Source of Claims Amendments", by reference to the claims now on file (Claims 1 to 24), the source of each of the elements of each of the amended claims submitted with the response filed on December 22, 2004 and being resubmitted herein (new Claims 25 to 32). There has never been any suggestion by the Examiner that the subject matter of the claims now of record (Claims 1 to 24) are not fully supported by the original Specification.

Applicant notes that the Trail reference, discussed below and raised for the first time in the Final Action dated November 2, 2004, was listed by the Examiner in the Notice of References Cited accompanying the Office Action of March 23, 2004, but was not then relied upon or made the basis for any rejection. It must be assumed, therefore, that the Examiner did not consider at that time that the Trail reference could be combined with any of the references cited in the first Office Action, or that any further search was necessitated. Applicant respectfully disagrees that the amendment filed on July 22, 2004, which narrowed the claims, could lead to an anticipation citation, nor that the further narrowing amendment of December 22, 2004 in response to the citation of this reference, could therefore necessitate a further search.

Source of Claims Amendments

Proposed amended claims	Original (<u>amended</u>) claim text	Original claim reference
25. An outdoor feeder apparatus for wild birds comprising	An <u>animal</u> feeder support apparatus for collecting and retaining <u>animal</u> waste feed, the apparatus comprising	Claim 1 preamble
(a) a platform having at least one low point and	a platform including at least one low point	Claim 1, element a

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constructed and arranged to be connected at a discharge opening at each low point	a support at each low point having a first end and a second end, said support including a passageway between said first and second ends	Claim 1, element c
to an inlet opening	an opening located within said at least one low point	Claim 1, element b
in a hollow support means	The feeder support according to claim 1, wherein said support is a hollow support tube	Claim 10
attachable to a base and	The feeder support according to claim 1, wherein a base is located at said second end.	Claim 2
adapted to provide in operation an unobstructed substantially vertical downward waste discharge path from each discharge opening	wherein a path from said platform to said collection container via said passageway is substantially unobstructed so as to allow flow of waste feed therethrough.	Claim 1, wherein clause
to a replaceable collection container	a collection container located at said second end; The feeder support according to claim 1, wherein said collection container can be replaced or emptied.	Claim element d Claim 9
provided within the base;	The feeder support according to claim 2, wherein said base includes a means for accessing said collection container.	Claim 3
(b) a cover member adapted to	The feeder support according to claim 1, wherein a cover is attached to said platform.	Claim 20
(i) be maintained in spaced-apart relationship from the platform by a plurality of cover support members provided at selected points on an upper surface of the platform, and	The feeder support according to claim 20, wherein said cover is attached to the platform by multiple rigid stems.	Claim 21
(ii) provide, in operation, vertical coverage over at least all of a horizontal plane connecting all points on a perimeter of the platform; and	The feeder support according to claim 20, wherein said cover reduces snow accumulation on the platform.	Claim 22

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(c) hanging means provided on an interior surface of the cover adapted for releasably securing a bird feeding means.	a saucer-shaped platform including at least one low point with a central opening and having a hanging member to support a cover fixed to said saucer-shaped platform, said hanging member capable of suspending a bird feeder, said cover being fixed to said saucer-shaped platform using multiples rigid stems sufficiently spaced apart from one another to sustain said cover;	Claim 24, element a
26. An outdoor feeder apparatus as claimed in Claim 25,		
wherein the hollow support means comprises a telescopic tube,	The feeder support according to claim 11, wherein said hollow support tube is a hollow telescopic support tube.	Claim 11
wherein in an operating position		
(i) each section has a larger internal diameter than an immediately higher section, and	wherein a path from said platform to said collection container via said passageway is substantially unobstructed so as to allow flow of waste feed therethrough.	Claim 1 wherein clause
(ii) securing means are provided to retain the sections in a selected position after adjustment.	<p>The feeder support according to claim 11, wherein said hollow telescopic support tube includes multiple encasing sections.</p> <p>The feeder support according to claim 12, wherein said hollow telescopic support tube has a height that is adjustable by expanding and retracting said multiple encasing sections.</p> <p>The feeder support according to claim 13, wherein said multiple encasing sections include suitable retention means for maintaining and multiple encasing sections in an extended position and said apparatus in an upright position.</p>	<p>Claim 12</p> <p>Claim 13</p> <p>Claim 14</p>

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27. An outdoor feeder apparatus as claimed in Claim 25, wherein a ground-facing surface of the base is substantially open.	The feeder support according to claim 2, wherein said base is a bottomless base.	Claim 6
28. An outdoor feeder apparatus as claimed in Claim 27, wherein the base is provided with fixing means to secure it to a supporting surface.	The feeder support according to claim 2, wherein said base is fixed to the ground by fixing means.	Claim 5
29. An outdoor feeder apparatus as claimed in Claim 25, wherein a sidewall of the base comprises access means for selectively removing and replacing the collection container.	The feeder support according to claim 2, wherein said base includes a means for accessing said collection container. The feeder support according to claim 1, wherein said collection container can be replaced or emptied.	Claim 3 Claim 9
30. An outdoor feeder apparatus as claimed in any of Claim 25, wherein the collection container has a water permeable base.	The feeder support according to claim 1, wherein said collection container includes a bottom part that is water permeable.	Claim 7
31. An outdoor feeder apparatus as claimed in Claim 30, wherein the water permeable base comprises a fine mesh.	The feeder support according to claim 7, wherein said bottom part of the collection container is a mesh of an appropriate grade to prevent water from accumulating in the collection container and simultaneously capable of retaining the wasted material in the collection container.	Claim 8
32. An outdoor feeder apparatus as claimed in Claim 25, wherein dimensions of the platform are selected such that a minimum distance of the perimeter from an outer surface of the hollow support means exceeds a maximum limbspan of animals capable of climbing the hollow support means.	The feeder support according to claim 1, wherein said platform is a saucer-shaped platform. The feeder support according to claim 1 claim 16, wherein said saucer-shaped platform has a diameter sufficient to prevent grasping of an edge of said saucer-shaped platform by animals.	Claim 16 Claim 17

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Discussion of claims amendments and response to rejections

In new claims 25 to 32, each of the Examiner's rejections in the Final Action dated November 2, 2004 have been addressed. It is respectfully submitted that each of the rejections in the Office Action dated March 23, 2004 was already rendered moot by the submissions and amendment filed on July 22, 2004, and that there is no ground for considering those rejections further. Nevertheless, care has been taken to ensure that each of the rejections in the Office Action dated March 23, 2004 have also been fully addressed.

However, to the extent that the amended claims submitted herewith contain the same features as any of the cancelled claims 1 to 24, the rejections are discussed in detail below, firstly as arising from the Final Action dated November 2, 2004, and secondly as arising from the Office Action dated March 23, 2004.

(I) Rejections contained in Final Action dated November 2, 2004

The source of each element in new Claim 25 is noted in the above table with reference to the original and previously amended claims. In addition, there can be no dispute that each element of new independent Claim 25 is fully supported by the Specification.

New Claim 25 is clearly directed to an outdoor feeder apparatus for wild birds. As will be discussed below, none of the cited references US 4,181,612; 4,384,547; or 5,533,466 in any manner teaches or suggests features for outdoor use for wild birds; nor could any embodiment of any of these three patents be considered suitable for such use — indeed the features described in each of these patents clearly contraindicate use for wild birds.

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Further, as will be discussed below, US 5,549,075 neither teaches nor suggests the features of the present invention as claimed in new Claim 25 submitted herewith.

Still further, having regard to the differences between the present invention, as defined in the new claims submitted herewith, and the disclosures in the prior art citations, as discussed below, it is submitted that the present invention, as claimed in new independent Claim 25 (and thus the dependent Claims 26 to 32) cannot be found to be anticipated by US 4,181,612; nor obvious in light of any of the four citations, alone or in combination.

The Examiner's objections will be considered in the order presented in the Final Action.

Rejection under 35 USC 112

Claim 18 has been cancelled and its wording no longer appears in the claims. This objection is therefore moot.

Rejections under 35 USC 102 based on US 4,181,612 to Trail

The Examiner has rejected claims 1-4, 7-10, 19-22 as anticipated by US 4,181,612, to Trail.

Although each of these claims has been cancelled, the reference will be considered in relation to new Claims 25 to 32 submitted herewith.

The cited reference is for an apparatus for servicing a domestic bird cage, the principal features of which are that bird waste materials pass from the base of the cage, to a filtration zone in an aquarium, and water from the aquarium can be pumped up to the bird cage to flush the floor of the cage.

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In contrast, the present invention relates to an outdoor feeder apparatus for wild birds.

It is submitted that Trail does not disclose the features of the subject invention as claimed in new Claim 25 submitted herewith. Nor could the Trail apparatus be used as an outdoor feeder for wild birds. Trail's cage is required to be enclosed, for indoor domestic use. The enclosure would inhibit wild birds from entering and leaving the feeding zone. Further, the waste is not, as suggested by the Examiner, collected in an identifiable, much less replaceable, container, but in a filtration bed within the general filtration system of the aquarium. Still further, the Trail reference does not disclose or suggest a cover which provides protection for a platform so that wild birds can freely enter and leave the feeding zone, while feed crumbs or husks can be collected through the downward path into the collection container, the additional benefit of the cover being the reduction of rain water collection. Nor does Trail disclose or suggest a hanging means for releasably securing a birdfeeding means.

It is therefore submitted that new Claim 25 is not anticipated by Trail, and that the device as described by Trail manifestly could not be used for the purpose to which the subject invention is directed.

As each of new Claims 26 to 32 is dependent on new Claim 25, it is submitted that none of these claims could be anticipated by Trail.

Rejection under 35 USC 103 based on US 4,181,612, to Trail

The Examiner has rejected Claims 5, 6, 16 -18 as being obvious in light of Trail.

As noted above, each of these claims has been cancelled. However, this rejection will be discussed in relation to the new claims submitted herewith to the extent feasible, in the event that the Examiner might consider that the rejection in any manner continues to have any relevance.

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Most importantly, as discussed above, Trail does not disclose the features of the subject invention as claimed in new Claim 25. Thus, in addition to the further limitations defined in the dependent claims objected to, Trail must also, but manifestly does not, suggest the addition of the elements of new Claim 25 that it does not disclose, namely an outdoor feeder for wild birds, a replaceable waste collection container, a supported cover member which provides protection for a platform, and a hanging means for releasably securing a bird feeding means, supported and protected by the cover.

It should be noted that the limitations added by original Claims 5 (fixing means for base), 6 (bottomless base), 16 – 18 (saucer-shaped platform and its diameter) have not been repeated in the same manner in the new claims submitted herewith, or at all.

The limitation of fixing means for the base of the device has been incorporated in new dependent Claim 28. Such a fixing means, as directed to an outdoor device which might be fixed to a deck or similar structure, would not be suggested by the fact that an indoor domestic bird cage (or the aquarium beneath) might be (but is not shown to be) fixed in some manner.

The limitation of a bottomless base has been incorporated in new dependent Claim 27. There is no suggestion that Trail could comprise a bottomless base – either for the cage (in which case the waste would fall into the aquarium water with disastrous consequences for the fish) or for the aquarium itself which would be inoperable without a watertight bottom.

The limitations of a saucer-shaped platform and its diameter have not been included as such in new Claims 25 to 32. New Claim 32 provides a limitation directed to the selection of appropriate dimensions to the platform so that unwanted animals (such as squirrels) which are capable of climbing the support means would not be able to reach

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around the overhang of the platform and gain access to the feed zone. As now defined, this claim cannot be regarded as obvious in light of Trail, which is in no manner directed or relevant to the problem of outdoor wild animals addressed by the limitation described in new Claim 32.

The closure of each of the cage and aquarium of Trail is mandated by their purpose, not being directed at excluding intruders but at retaining the caged domestic pet within the enclosure. These mutually distinct purposes of necessity mandate completely different structural and functional features, such that the present invention cannot be obvious from Trail.

Rejection under 35 USC 103(a) based on US 4,181,612 to Trail in view of US 5,549,075 to Golden

The Examiner has rejected Claims 11 – 15 as being obvious based on Trail in view of Golden.

Each of these claims has been cancelled. This group of claims was directed to the use of telescopic support means for the apparatus of the original (and previously amended) Claim 1. It is submitted that although new Claim 26 adds the limitation of a telescopic tube, it is defined in such manner that it is clearly distinguishable from the tube of Golden. In particular, the telescopic tube of Golden is of necessity of gradually increasing diameter in the upwards direction, to allow for the feed to be pumped upwards to the feed supply zone, whereas the gradual increase in diameter for the invention is in the downwards direction, to allow the waste to pass substantially unobstructed down to the collection container. While telescopic tubes are indisputably not new either at the date of Golden or the present application, it is clear that the addition of such feature to the inventive features of new Claim 25, resulting in the limitations of Claim 26, cannot be found obvious in this manner.

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Nor does Golden teach or suggest any of the elements of Claim 25 that are not disclosed by Trail.

More importantly, it is submitted that it would not be obvious to combine the telescopic power-operated upward feeding means of Golden with the indoor domestic bird cage/aquarium combination of Trail. As Trail does not disclose or suggest the features of the present invention as claimed in new Claim 25, it is submitted that this objection is moot.

Rejection under 35 USC 103(a) based on US 4,181,612 to Trail in light of US 4,384,547 to Maddox

The Examiner has rejected original Claim 23 as obvious based on Trail in light of Maddox.

This claim has been cancelled and not replaced in the new Claims 25 to 32 submitted herewith, rendering the objection moot.

Rejection under 35 USC 103(a) based on US 4,181,612 to Trail in light of US 5,533,466 to Kohus and US 5,549,075 to Golden

The Examiner has rejected original Claim 24 as obvious based on Trail in light of Kohus and Golden.

This claim has been cancelled and not replaced in the new Claims 25 to 32 submitted herewith.

To the extent that new Claim 25 contains some of the features defined in cancelled Claim 24, it is submitted that it would not be obvious to combine the teachings of Trail (as to an indoor bird cage and aquarium combination for domestic use) with the teachings of Kohus (an indoor bird cage providing a viewing means for observing a

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caged bird) and the teachings of Golden (an outdoor bird feeder with an automatic feed level sensor and pump means).

In particular it is submitted that none of these three references, alone or in combination, disclose, teach or even remotely suggest the features of new independent Claim 25, or new Claims 26 to 32 dependent thereon.

(I) Rejections and objections contained in Office Action dated March 23, 2004

Objection to Abstract and Claim 14

An amended Abstract was filed with the response dated July 22, 2004. However, a further amended Abstract, which more accurately reflects the invention as now defined in Claim 25, is submitted herewith, with the request that it be entered on file.

As noted in the response filed on July 22, 2004, the objection to Claim 14 appears to have been intended to be to Claim 24. As the result of the claims amendments submitted herewith, this objection is now moot.

Rejection of Claim 17 under 35 USC 112

As the result of the claims amendments submitted herewith, this objection is now moot.

Rejections under 35 USC 102 in light of Dalton, US 1,840,024

The Examiner rejected Claims 1-5, 9, 10, 16, 17, 19 and 23 as anticipated by Dalton, US 1,840,024. Each of these claims has been cancelled, and replaced by amended Claims 25 to 32 submitted herewith.

Applicant submits that Dalton does not disclose all the features of Claim 25 submitted herewith. In particular, Dalton discloses an ornamental smoker's stand for collection of smoker's waste in an indoor environment; and does not disclose any feature

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appropriate for an outdoor feeder apparatus for wild birds. Nor could Dalton's apparatus be used to feed wild birds outdoors.

As independent Claim 25 is clearly not anticipated by Dalton, none of Claims 26 to 32, each of which is dependent on Claim 25, can be regarded as anticipated by Dalton.

Rejections under 35 USC 103 in light of Dalton, US 1,840,024 and LeBlanc, US 5,507,242 or Luedecke, US 5,924,425

The Examiner rejected Claim 18 as obvious over Dalton, US 1,840,024; Claims 11 to 15 as obvious over Dalton in light of LeBlanc, US 5,507,242, and Claims 21 and 22 as obvious over Dalton in light of Luedecke, US 5,924,425.

In relation to Claim 18, this claim has been cancelled and the subject matter is not repeated in the amended claims 25 to 32, so that the rejection is moot.

In relation to such of the subject matter of cancelled Claims 11 to 15 as is included in Claims 25 to 32, it is submitted that the rejection is not sustainable.

Firstly, it would not be obvious to combine a set of telescoping tubes as disclosed in LeBlanc with a smoker's stand as disclosed in Dalton. There would be no reason to do so, and it is not appropriate to suggest combining prior art references from such widely differing fields. There would be no reason for any person addressing the problems to which the present invention is directed, i.e. constructing an outdoor feeder apparatus for wild birds, to consider the art in relation to smoker's stands or hand operated trolling motor control stations, much less to combine the teachings from these two fields.

Secondly, even if the teachings of either of these two references could be combined in any manner, the features of the present invention, as now claimed, would not be obvious from the combined teachings, which do not disclose or even remotely

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suggest elements of Claim 25 such as the cover and its relationship with the platform, the container within the base, and the hanging means for securing a bird feeder means.

In relation to Claims 21 and 22, the elements of these claims are not included as such in Claims 25 to 32.

Independent Claim 25 includes the feature of a cover. Luedecke indicates the use of a cover for a smoker's stand. Even if some form of cover could be added to the device of Dalton, similar to that of Luedecke, the type of cover disclosed by Luedecke is entirely distinguishable from the cover of the invention. The cover of Luedecke, being a complete enclosure, would quite clearly be completely unsuitable for use in the present invention, in that access by birds would be impossible.

The stated purpose of the cover of Luedecke is to contain wastes and prevent smoke from escaping to the surrounding air in an indoor environment. This has no connection with preventing snow or other precipitation from accumulating on the platform of the invention while at the same time allowing ready access to the platform by wild birds for feeding purposes. It is not appropriate to regard a cover for one type of physical device to be obvious from a cover for a completely different device having a completely different purpose and function.

Thus, even if the teachings of Dalton and Luedecke could be combined, in the field of devices for collection of used smoking materials, there is not the least suggestion that such combination could lead to the features of the instant invention for the outdoor feeding of wild birds.

It is therefore submitted that the rejections under 35 USC 103 based on Dalton in light of either LeBlanc or Luedecke clearly cannot apply to any of Claims 25 to 32.

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Rejections under 35 USC 102 in light of Wilmanns, US 1,807,079

The Examiner rejected Claims 1-3, 5, 6, 9, 10, 16, 17, 19 –21 as anticipated by Wilmanns, US 1,807,079.

Applicant submits that Wilmanns does not disclose all the features of Claim 25 submitted herewith. In particular, Wilmanns discloses an ornamental smoker's stand for collection of smoker's waste in an indoor environment; and does not disclose any feature appropriate for an outdoor feeder apparatus for wild birds. Nor could Wilmann's apparatus be used to feed wild birds outdoors.

The Examiner suggested that Figure 3 of Wilmanns discloses a cover. Applicant respectfully disagrees, in that the element 37 of Figure 3 of Wilmanns (identified in the reference as a "strap") quite clearly does not "cover" anything, but serves the purpose of facilitating the carrying of the device as a handle, as indicated in column 2, lines 28 to 30.

Further, Wilmanns does not disclose the other significant aspects of the cover of the invention as claimed in Claim 25.

As independent Claim 25 is clearly not anticipated by Wilmanns, none of Claims 26 to 32, each of which is dependent on Claim 25, can be regarded as anticipated by Wilmanns.

Rejections under 35 USC 103 in light of Wilmanns, US 1,807,079 and Luedecke, 5,924,425 or LeBlanc, US 5,507,242

The Examiner rejected Claim 18 as obvious over Wilmanns, Claims 11 – 15 as obvious over Wilmanns in light of LeBlanc, and Claims 21 and 22 as obvious over Wilmanns in light of Luedecke.

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As noted above, Claim 18 has been cancelled and the subject matter is not repeated in the amended claims 25 to 32, so that the rejection is moot.

For the same reasons as discussed above in relation to Dalton in light of LeBlanc and Luedecke, the invention is not obvious over Wilmanns either alone or in light of these same two additional references.

Firstly, Wilmanns alone does not disclose any further feature over Dalton which could be remotely regarded as suggestive of any feature of the invention as now claimed.

Secondly, it would be no more obvious to combine the teachings of Wilmanns with LeBlanc or Luedecke than it would be to combine Dalton with these two references.

Thirdly, even if the teachings of either of these two references could be combined in any manner, with Wilmanns, the features of the present invention as now claimed would not be obvious from the combined teachings, which do not disclose or even remotely suggest elements of Claim 25 such as the cover and its relationship with the platform, the container within the base, and the hanging means for securing a bird feeder means.

It is therefore respectfully submitted that none of the rejections of the Office Action of March 23, 2004 is applicable to any of Claims 25 to 32.

Conclusion


Applicant therefore respectfully requests that each of the citations be withdrawn in light of the amended claims 25 to 32 resubmitted herewith.

We look forward to receiving early confirmation of the same by the prompt issuance of a Notice of Allowance for this application.

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Should any further fees or payments be necessary for entry of this amendment and further prosecution of this application, the undersigned hereby authorizes the Commissioner to debit and/or credit our Deposit Account No. 16-0600.

Respectfully Submitted,
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